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## **RESPONSES TO INFORMATION REQUESTS (RIRs)**

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## IND103724.E

India: The 22 December 2010 Delhi High Court ruling that Namgyal Dolkar, a Tibetan woman born in India, is entitled to claim Indian citizenship by birth, as per the Citizenship Act

Research Directorate, Immigration and Refugee Board of Canada, Ottawa

On 22 December 2010, the High Court of Delhi ruled in favour of petitioner Namgyal Dolkar rather than the Government of India's Ministry of External Affairs (India 22 Dec. 2010, 1). Dolkar, a young Tibetan woman born in India on 13 April 1986, had petitioned to overturn the Ministry of External Affairs decision to deny her an Indian passport (ibid., 1, 16). The Court found that, pursuant to the Citizenship (Amendment) Act of 1986, Dolkar is entitled to claim Indian citizenship by birth and "cannot therefore be denied a passport" (ibid. 7, 16). The Court subsequently ordered the Ministry of External Affairs to process Dolkar's application for an Indian passport and pay a fine of 5,000 Indian rupees [109 Canadian dollars (XE.com 31 Mar. 2011)] (India 22 Dec. 2010, 16-17).

According to the court ruling, Dolkar had applied for an Indian passport in March 2008, stating on her application that she was an Indian citizen by birth (ibid., 2). However, the Ministry of External Affairs purported that she did not qualify for an Indian passport because the Passport Act stipulates that "a person is eligible to hold only one passport or travel document," and she already had an identity certificate, which qualifies as a travel document (ibid., 5-6). As well, the Ministry argued that she did not consider herself to be an Indian citizen since she had listed her nationality as Tibetan (ibid.). The Ministry also stated that, in view of a policy decision made by the Ministry of Home Affairs, Tibetan nationals who entered India after March 1959 are not granted citizenship by naturalization under Section 6(1) of the Citizenship Act (ibid.).

In the decision, the High Court of Delhi said that Section 6(1) of the Citizenship Act was not relevant to the case and that under Section 3(1)(a) of the amended Citizenship Act of 1986, Dolkar is "undoubtedly an Indian citizen by birth" (ibid., 14). The High Court quoted Section 3(1)(a) as follows:

- 3. Citizenship by birth:- (1) Except as provided in subsection (2), every born in India, -
- (a) on or after the 26th day of January 1950, but before the 1st day of July, 1987....

Shall be a citizen of India by birth. (India 22 Dec. 2010, No. 23)

Subsection (2) of the Citizenship Act prior to the amendment, was also quoted in the decision as follows:

- (2) A person shall not be such a citizen by virtue of this Section if at the time of his birth--
- (a) his father possess such immunity from suits and legal process as is accorded to an envoy of a foreign sovereign power accredited to the President of India and is not a citizen of India; or
- (b) his father is an enemy alien and the birth occurs in a place then under occupation by the enemy. (India 22 Dec. 2010, No. 17)

Based on the amended legislation, the High Court reasoned as follows:

The Petitioner was born in India on 13th April 1986, i.e. after 26th January 1950 and before 1st July 1987, and is an Indian citizen by birth in terms of Section 3(1)(a) CA [Citizenship Act]. She cannot therefore be denied a passport on the ground that she is not an Indian citizen in terms of Section 6(2)(a) PA [Passport Act]. (India 22 Dec. 2010, No. 31)

The High Court also noted that a person who is an Indian citizen by birth is not required to apply for citizenship (ibid., 13). It found that Dolkar had not "renounced' her Indian citizenship by birth by stating that she is a Tibetan national" (ibid.,15).

Media sources have described the decision as a "milestone" for the Tibetan community (*The Tibet Post International* 20 Jan. 2011), one that will help many others born in India to non-Indian parents (*Hindustan Times* 28 Dec. 2010). According to the Indo-Asian News Service (IANS), the Tibetan government-inexile in Dharamsala welcomed the High Court ruling, characterizing it as a "landmark judgement" (IANS 20 Jan. 2011).

However, in correspondence with the Research Directorate, the Board Chair of the Tibet Justice Center, an organization based in Oakland, California that provides legal advocacy for Tibet in the fields of human rights, environmental sustainability, asylum and immigration, and democracy development (Tibet Justice Center n.d.), stated that, as of 28 March 2011, he and his colleagues were not aware of anyone other than Dolkar who had successfully acquired citizenship on the basis of the High Court's decision (28 Mar. 2011). A representative of the Bureau of H. H. Dalai Lama in New Delhi stated, in correspondence with the Research Directorate, that the Bureau had heard of cases in which Tibetans born in India between 26 January 1950 and 1 July 1987 had applied for Indian citizenship after the court ruling (24 Mar. 2011). However, as of 24 March 2011, their cases were still pending (Bureau of H. H. Dalai Lama 24 Mar. 2011). The representative also noted that Dolkar had been issued her Indian passport (ibid.). The Executive Director of the Canada Tibet Committee (CTC), a Montreal-based non-governmental organization (NGO) that aims to restore Tibet's status as an independent state (CTC n.d.), explained, in correspondence with the Research Directorate, that the absence of identification documents, such as birth certificates, may pose a challenge for many Tibetans born in India wanting to obtain Indian citizenship (ibid. 31 Mar. 2011).

This Response was prepared after researching publicly accessible

information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of sources consulted in researching this Information Request.

## References

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## Additional Sources Consulted

**Oral sources:** Attempts to contact a law professor were unsuccessful within the time constraints of this Response.

**Internet sites, including:** Asian Centre for Human Rights (ACHR), European Country of Origin Information Network (ecoi.net), United Nations Refworld.

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